

2008-01

BULLETIN

Commonwealth Of Kentucky
Office Of Insurance
Frankfort, Kentucky 40601

TO: All Insurance Companies Subject To Kentucky Local Government
Premium Taxes

FROM: John Burkholder, Acting Executive Director

RE: 2008-2009 Kentucky Local Government Premium Tax
Schedule And Listing Of Payees And Addresses

DATE: April 7, 2008

Please review the information in this Bulletin carefully. This Bulletin contains changes to various tax rates imposed by cities, counties, charter counties, consolidated local governments, and urban-county governments on premium receipts in accordance with KRS 91A.080.

Local Government Premium Tax

KRS 91A.080 permits cities, counties, charter counties, consolidated local governments, or urban-county governments to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance. For the purposes of this Bulletin, "local government" shall mean any city, county, charter county, consolidated local government, or urban-county government that imposes and collects license fees or taxes pursuant to KRS 91A.080. New or amended license fees or taxes are effective July 1 of each year on a prospective basis only. KRS 91A.080 further requires the executive director of insurance to notify each insurance company of the license fees or taxes no less than 85 days prior to their effective date. Accordingly, attached are the 2008-2009 Kentucky Local Government Premium Tax Schedule and the listing of payees and addresses. The local governments that have adopted or amended their taxes, payees, or addresses since the publication of Edition 2007-2008 are indicated with an asterisk (*). **Please also note changes in tax code identifications.**

Insurance companies and surplus lines brokers must adopt procedures to conform to the 2008-2009 schedule by July 1, 2008. The 2008-2009 schedule applies only to **premiums received after** July 1, 2008 through June 30, 2009.

In an effort to streamline the reporting requirement for brokers, this bulletin specifies that brokers are not required to submit a separate reporting form to the taxing jurisdictions for each carrier to which it exported business. Instead, surplus lines brokers shall submit one reporting form to each local government and to the Kentucky Office of Insurance. The

reporting forms require the surplus lines brokers to list the carriers through which business was placed and which make up the taxable premium being reported. A separate section has been included on the tax reporting forms for the reporting of this information.

Determination of Tax Liability

Pursuant to KRS 91A.080, taxes are imposed on the risks located within the corporate limits of the city, county, charter county, consolidated local government, or urban-county government. Since many mailing addresses are not where the risk is located (they could be within more than one county, or on a county line), ZIP codes cannot be used to determine the tax liability. It is imperative the insurance company/broker identify the specific county and/or city in which the risk is located in order to properly assess the local government premium taxes.

The insurance company/broker must use the tax rate effective on the first day of the policy term. When an insurance company/broker collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. The percentage tax rates are to be charged per policy.

Special Instructions Related to Surplus Lines Business

Pursuant to KRS 304.10-180(1)(c), each surplus lines broker is required to pay the local government premium tax in accordance with KRS 91A.080.

Separate quarterly tax returns shall be submitted to the applicable local government by the surplus lines broker. Each return submitted to the local governments shall include a listing of the insurance companies that supplied the coverage for which the premiums and taxes are being reported. This information shall be listed in the designated section of Form LGT-141. **Please note that surplus lines brokers are not required to submit a separate Form LGT-141 to each local government for each insurance company through which insurance business was exported.**

Annual reconciliations shall be filed with the Office of Insurance and the applicable local government by the surplus lines broker. Each return submitted to the local governments shall include a listing of the insurance companies that supplied the coverage for which the premiums and taxes are being reported. This information shall be listed in Section III of Form LGT-140. **Please note that surplus lines brokers are not required to submit a separate Form LGT-140 to each local government for each insurance company through which insurance business was exported.**

Exemptions to Tax Liability

No license fee or tax shall apply to premiums received on the following policies:

- Group health insurance provided for state employees;
- Individual health insurance including policies issued through Kentucky Access;
- Workers' compensation insurance;
- Annuities;
- Federal flood insurance;

- Municipal bonds, leases or other debt instruments issued by or on behalf of the local government; or
- High deductible health plans as defined in 26 U.S.C. sec. 223(c)(2), commonly referred to as Health Savings Accounts.

No license fee or tax shall apply to policies issued by

- Entities issued a certificate of authority to do business in Kentucky only as a health maintenance organization pursuant to KRS 304.38-060;
- Entities issued a certificate of authority to do business in Kentucky as a captive insurer pursuant to KRS 304.49-010; or
- Domestic life insurance companies electing to be taxed under the provisions of KRS 136.320 – Capital and Surplus Tax.

No **county** may impose the tax authorized by KRS 91A.080 upon premiums received on policies issued to public service companies which pay ad valorem taxes.

Additional exemptions may apply pursuant to the ordinance enacted by the local government. Please refer to the tax code for each local government identified on the attached schedule for additional information.

Indivisible Premium

KRS 91A.080(8) requires a breakdown of all collections by category of insurance listed in the statute. Therefore, the appropriate premium must be allocated to the various lines before the applicable tax is calculated. For indivisible premiums, a weight of two-thirds of the premium must be given to the fire provision and one-third of the premium to the property and casualty provisions before determining the tax.

Tax on Life Insurance

The tax on life insurance shall be based on the first year's premiums and applied to the amount actually collected within the first year.

Tax on Surety Bonds

In a surety transaction, local government premium tax is applicable based on the location of the obligee. The obligee is the risk and the tax is determined by the location of the risk (obligee). The location of the obligee only determines **where** the premium tax is paid. The principal in the surety transaction (the premium payor) determines whether the tax is due. Consequently, if the principal is not a taxable entity (such as a state agency), then no local government premium is due on the surety bond.

Minimum Taxes

If the calculated tax is less than the stated minimum tax, the insurance company must pay the minimum amount. The minimum tax shall be paid quarterly, per insurance company, and is not chargeable to the insured.

Flat Fees

Flat fees shall be paid quarterly, per insurance company, and are not chargeable to the insured.

Collection Fees

Pursuant to KRS 91A.080(4) and 806 KAR 2:090, a reasonable collection fee may be charged and retained by the insurance company or its agent. The collection fee shall not be more than 15% of the tax collected and remitted to the local government or 2% of the taxable premium, whichever is less. This fee is in addition to the tax payable.

Adding Taxes to Policy Premium

Each policy issued to an insured for the first time shall include notice that the premium includes a charge for local government premium taxes if local government premium taxes are included in the premium charge.

Pursuant to 806 KAR 2:096, the premium for the following policies shall make a provision for the license fee or tax:

- Property;
- Casualty;
- Surety;
- Marine;
- Title; or
- Mortgage guaranty insurance.

The premium for life and health insurance policies may make a provision for the license fee or tax.

On policies naming a city or the state or one of its agencies as the insured, the license fee or tax may not be added to the policy premium.

Refund of Tax Overpayments

Effective June 20, 2005, any insurance company, broker, or agent that overpays any license fee or tax to a city, county, charter county, consolidated local government, or urban-county government shall be refunded the amount overpaid. If it is determined that an insurance company, broker, or agent paid a license fee or tax to a city, county, charter county, consolidated local government, or urban-county government based upon premiums collected upon lives or risks which are discovered to be located outside the legal corporate limits of the city, county, charter county, consolidated local government, or urban-county government which was paid the license fee or tax, the insurance company, broker, or agent shall be refunded those license fees and taxes within ninety (90) days of notice to the governmental entity paid. In accordance with KRS 304.12-190(3), any tax or collection fee collected from an insured by the insurance company, broker, or agent on a risk for which no such tax or fee was due shall be promptly refunded to the insured.

Unearned Premiums

As to return of premiums to policyholders, KRS 91A.080 specifies that the tax on the unearned premium shall be returned to the policyholder at the same rate at which the tax was collected and shall be taken as a credit by the insurance company on its next quarterly report to the local government. Returned premiums shall be reported on the annual reconciliation Form LGT-140. If the tax rate of the returned premium is different from the tax rate of the quarter in which it was returned, the returned premiums and the rate at which they were returned must be listed as a separate line item.

Credit for City Tax Against County Tax

KRS 91A.080(12) requires insurance companies to credit city license fees or taxes against the county license fees or taxes imposed for the same license fees or taxes imposed by the county. This credit only applies if the county ordinance was enacted on or after July 13, 1990.

For reporting purposes, a credit of the city license fees or taxes against the county license fees or taxes must be taken and an LGT-142 form attached to the quarterly filing (Form LGT-141) and the annual reconciliation (Form LGT-140) if all of the following are true:

- The risk is located within the city limits;
- The county in which the city is located also imposes a tax;
- The county issued its ordinance on or after July 13, 1990; and
- The county license fee or tax for the applicable category (life, health, casualty, etc.) is higher than the city license fee or tax.

If a credit is required, the insurance company must pay the license fee or tax due to the city and pay the balance due to the county.

For July 1, 2008, through June 30, 2009, this credit applies to the following local governments:

Bullitt County

- Hebron Estates
- Shepherdsville
- Mount Washington

Hopkins County

- Dawson Springs
- Hanson
- Madisonville
- Nebo
- St. Charles
- White Plains

Jefferson County

- Glenview Manor
- Kingsley
- Ten Broeck
- Watterson Park

Oldham County

- LaGrange
- Orchard Grass Hills
- River Bluff

Mason County

- Dover

Trigg County

- Cadiz

Meade County

- Ekron

Wayne County

- Monticello

Pulaski County

- Science Hill

Quarterly Payment of Taxes

License fees or taxes are due to the applicable local government 30 days after the end of each calendar quarter. Each insurance company and surplus lines broker shall file separately, using form LGT-141 or a substantially similar form. These forms do not need to be filed with the Office of Insurance. However, pursuant to 806 KAR 2:070, these forms must be retained for a minimum period of five (5) years. For more specific information regarding the filing of the quarterly tax return, please refer to the instructions for filing form LGT-141.

Quarterly filings submitted in a format other than on Form LGT-141 or a substantially similar form will not be accepted as a complete filing by the Office of Insurance and will be returned to the filer.

Penalties

Pursuant to KRS 91A.080(9), any license fee or tax not paid on or before the due date shall bear interest from the date due until paid. The Department of Revenue has set the interest rate for 2008 at eight percent (8%). Any interest due is payable to the applicable local government. Additionally, pursuant to KRS 91A.080 (7), willful failure to properly collect and remit the fee or tax constitutes grounds for revocation of the insurance company's certificate of authority.

In addition, effective June 20, 2005, if the Office of Insurance finds that an insurance company has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax imposed by a local government, the Office of Insurance may assess the responsible insurance company an appropriate penalty fee no greater than ten percent (10%) of the additional license fees or taxes determined to be owed to the local government.

Annual Reconciliation

Each insurance company and surplus lines broker shall file an annual reconciliation on or before March 31st of each year to the applicable local government. In addition, a copy of the annual reconciliation and a filing fee of \$5.00 per insurance company or surplus lines broker, payable to the Kentucky State Treasurer, must be submitted to the Office of Insurance, Local Government Premium Tax Unit, P.O. Box 517, Frankfort, Kentucky

40602. The insurance company and surplus lines broker shall use Form LGT-140 or a substantially similar form.

If an insurance company or surplus lines broker has not collected premiums for which a local government premium tax applies, the insurance company/broker shall file an annual reconciliation with the Office of Insurance. The annual reconciliation shall state the reason that no Kentucky local government premium taxes were due.

For more specific information regarding the filing of the annual reconciliation, please refer to the instructions for filing form LGT-140.

Annual Reconciliation filings submitted in a format other than on Form LGT-140 or a substantially similar form will not be accepted as a complete filing by the Office of Insurance and will be returned to the filer.

General Filing Rules

- Do not staple pages of your filing together
- No font smaller than 8 point shall be used when preparing the filings. Illegible or unreadable filings will not be accepted and will be returned to the filer for correction.

Questions

Questions should be directed to the Local Government Premium Tax Unit. Phone: 502-564-1649; Fax: 502-564-6090; or e-mail: Brenda.Smith@ky.gov.

Attachments:

1. 2008-2009 Kentucky Local Government Premium Tax Schedule
2. 2008-2009 Kentucky Local Government Premium Tax Listing of Payees and Addresses
3. Form LGT-140 (03/05), Annual Reconciliation
4. Form LGT-141 (03/05), Quarterly Return
5. Form LGT-142 (03/04), City Credits Against County Taxes